# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 217.

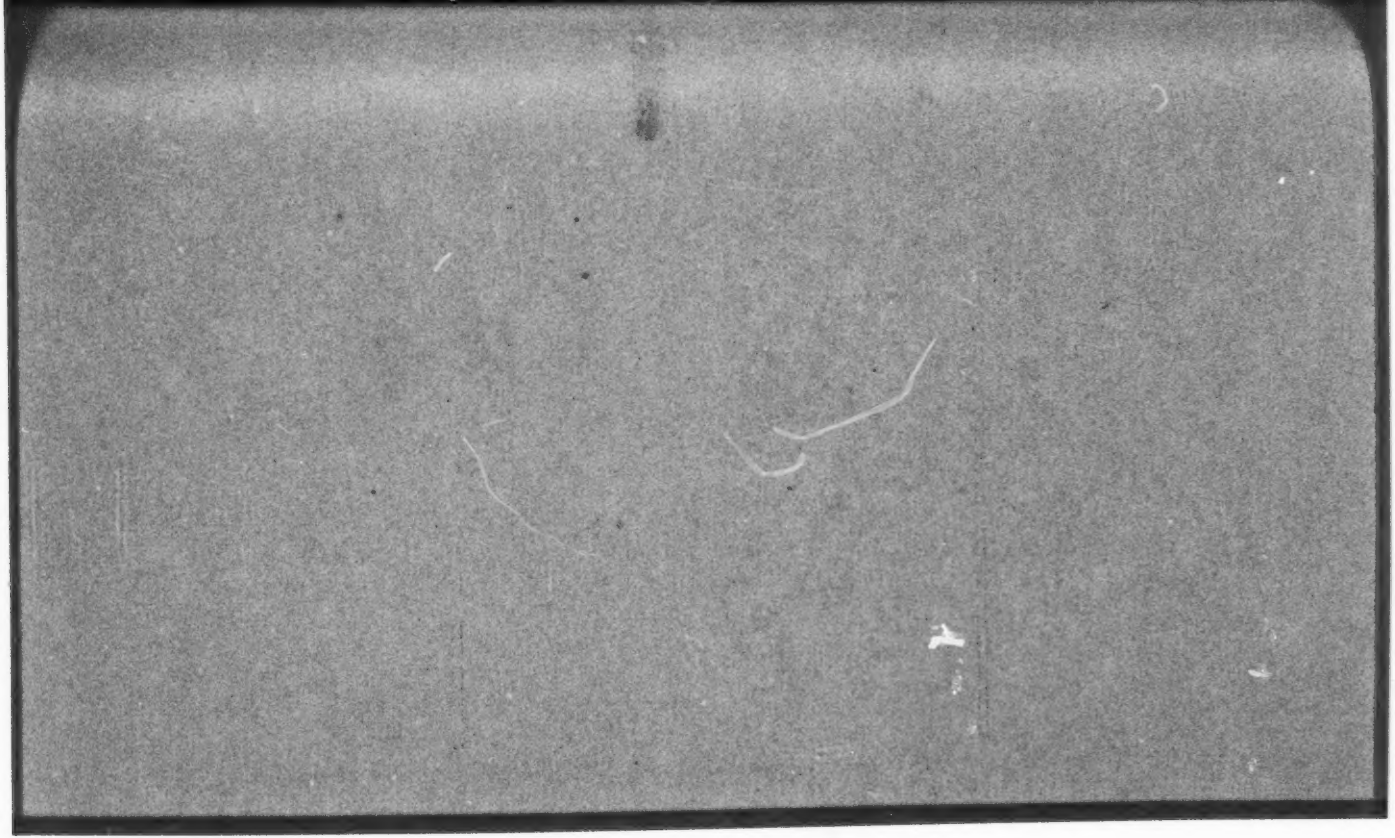
THE UNITED STATES, APPELLANT,

vs.

CHARLES J. FERRIS.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 12, 1923.



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INDEX.


| | Original. | Print. |
|---|---|---|
| Record from the Court of Claims | 1 | 1 |
| Petition | 1 | 1 |
| General traverse | 5 | 2 |
| Argument and submission | 5 | 3 |
| Findings of fact | 6 | 3 |
| Conclusion of law | 7 | 4 |
| Memorandum | 7 | 4 |
| Judgment | 8 | 5 |
| Petition for and order allowing appeal | 8 | 5 |
| Clerk's certificate | 9 | 5 |


67700—23

1 In the Court of Claims.

CHARLES J. FERRIS
*v.*
THE UNITED STATES. } No. 315–A

I. *Petition.*

(Filed November 10, 1921.)

*To the Honorable the Court of Claims:*

The claimant, Charles J. Ferris, respectfully represents:

I. The claimant was during the time hereinafter set forth a lieutenant colonel in the Army of the United States.

II. On August 27, 1917, he was an officer of the 314th Field Artillery, being lieutenant colonel thereof. On that day, he was by verbal orders of the commanding general, 80th Division, comprising the 314th and 315th Regiments of Field Artillery, placed in command of the 315th Regiment of Field Artillery, there being no colonel or lieutenant colonel with that regiment at the time, and that not being his own regiment. He could not have commanded said 315th Regiment of Field Artillery or served with it at all if he had not been placed in command of it by order of the commanding general of the division.

He immediately took command of said 315th Regiment of Field Artillery on August 27, 1917, and remained in command thereof until January 5, 1918, during all that time, with the exception
2 of one day, September 24, 1917, exercising the command of a colonel commanding said regiment, under orders issued by competent authority.

III. During the whole of the period in question said 315th Field Artillery was assembled for the purpose of carrying on and bringing to a conclusion the war then existing with Germany and afterwards with Austria-Hungary and was operating against enemies of the United States.

IV. During the period during which the claimant was thus in command of the 315th Field Artillery another officer, Lieutenant Colonel Russell P. Reeder, was assigned in that regiment and reported on September 24, 1917, but without actually taking command except nominally for that one day. He was on September 25th placed on detached duty for a three-months' course in the officers' school at Fort Sill, and the claimant by renewed order of the commanding general of the 80th Division was directed to take command of the 315th Field Artillery and remained in command thereof until the return of Lieutenant Colonel Russell P. Reeder to the regiment on January 5, 1918. Upon that date claimant was relieved from duty with the 315th Regiment of Field Artillery and was directed to rejoin his own regiment, the 314th Field Artillery.

During that period in November, 1917, he requested a transfer from the 314th to the 315th Field Artillery, which request was disapproved.

V. This claim is made under the act of April 26, 1898 (30 Stat. 365), providing "that in time of war every officer serving with troops operating against an enemy, who shall exercise, under an
3 assignment in orders issued by competent authority, a command above that pertaining to his grade shall be entitled to receive the pay and allowances of the grade appropriate to the command so exercised.

VI. The claimant therefore claims the difference between the pay of a lieutenant colonel and that of a colonel from August 27, 1917, to January 5, 1918, amounting to $250 more or less, subject to more exact computation by the General Accounting Office.

VII. This claim was presented to the War Department and an opinion given by the Judge Advocate General, dated June 16, 1921, in favor thereof, which opinion was on June 21, 1921, approved by the Secretary of War. The claim was also presented to the General Accounting Office but was disallowed by the Comptroller General of the United States.

No other action has been had on said claim in Congress, or by any of the departments; no person other than the claimant is the owner thereof or interested therein; no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. The claimant is a citizen of the United States. And the claimant claims two hundred and fifty dollars ($250.00).

KING & KING,
*Attorneys for Claimant.*

4 DISTRICT OF COLUMBIA, *ss:*

Charles J. Ferris being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge, information and belief.

CHARLES J. FERRIS.

Subscribed and sworn to before me this 8th day of November, 1921.

[SEAL.] GEO. B. RANDOLPH,
*Notary Public.*

5 II. *General traverse.*

(Filed January 10, 1922.)

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

III. *Argument and submission of case.*

On October 24, 1922, this case was argued and submitted on merits by Mr. George A. King, for the plaintiff, and by Mr. John G. Ewing, for the defendant.

6 IV. *Findings of fact, conclusion of law, and memorandum.*

(Entered Nov. 6, 1922.)

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

*Findings of fact.*

I.

The plaintiff, Charles J. Ferris, was appointed lieutenant colonel, Field Artillery, National Army, in the service of the United States, August 5, 1917; accepted this appointment August 21, 1917, and was attached to and joined the 315th Regiment, Field Artillery, August 23, 1917.

While attached to that regiment he was, August 27, 1917, by special orders issued by the commanding general of the 80th Division, American Expeditionary Forces, placed in command of the 315th Field Artillery, there being no colonel or lieutenant colonel with that regiment at the time. He immediately assumed command of said 315th Regiment of Field Artillery on the date of said order, August 27, 1917, and remained in command thereof by orders of the commanding general until the return of the lieutenant colonel of said 315th Regiment to duty with his regiment January 5, 1918.

During that period he requested to be transferred to said 315th Field Artillery as lieutenant colonel thereof and his request was refused on the ground that there was no vacancy, there being already a lieutenant colonel of said 315th Field Artillery, who was absent on detached duty and who protested against being detached from said 315th Regiment.

The order placing him in command of the 315th F. A. was necessary to enable him to assume such command. The 80th Division was one of the several National Army divisions organized for the purpose of carrying on and bringing to a close the World War and was composed of the different organizations and branches of the service going to make up a combat division, the 314th and 315th Regiments F. A. being component parts thereof. This division was organized and trained at Camp Lee, Virginia, and later on became a part of the American Expeditionary Forces and engaged in action with the enemy.

During the period from August 22, 1917, to January 5, 1918, the 315th Field Artillery was stationed at Camp Lee, Petersburg, Va., and this camp was used as a camp of instruction.

7 II.

During all the time that said Lieutenant Colonel Ferris exercised the command of the 315th Regiment of Field Artillery he was a lieutenant colonel of more than fifteen years' service in the Army and was paid as such.

If paid as a colonel for that period he would be entitled to receive over and above the pay he has already received the sum of $179.17.

*Conclusion of Law.*

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of one hundred and seventy-nine dollars and seventeen cents ($179.17).

*Memorandum.*

This is a suit brought by the plaintiff to recover increased pay and allowances for exercising a command above that pertaining to his grade from August 27, 1917, to January 5, 1918.

He relies upon the act of Congress approved April 26, 1898, 30 Stat., 365, which reads as follows:

"That in time of war every officer serving with troops operating against an enemy, who shall exercise, under an assignment in orders issued by competent authority, a command above that pertaining to his grade shall be entitled to receive the pay and allowances of the grade appropriate to the command so exercised."

The plaintiff was a lieutenant colonel of the 314th Field Artillery, and was by orders issued by competent authority under assignment to command the 315th Field Artillery, and exercised said command from August 27, 1917, to January 5, 1918. These two regiments of Field Artillery were in the 80th Division of the National Army organized for the purpose of carrying on the war which was then being waged between the United States and Germany. These regiments were organized and trained at Camp Lee, Virginia, and it was while they were being so organized and trained that the plaintiff rendered the service and exercised the command for which he is now claiming increased pay and allowances.

The troops which were being organized and trained at Camp Lee were assembled there for war purposes, and were necessarily operating against the enemy. They were there for no other purpose. Therefore the service rendered by the plaintiff was with troops operating against the enemy within the meaning of the statute. As was said in 22 Ops. Atty. Gen. 95—

"Any troops assembled at camps in the United States for * * * war purposes can properly be considered as operating against an enemy, although their * * * service is confined to the ordinary routine of camp life."

The plaintiff is entitled to recover, and it is so ordered.

8

V. *Judgment of the Court.*

At a court of Claims held in the city of washington on the sixth day of November, A. D. 1922, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge and decree that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of one hundred and seventy-nine dollars and seventeen cents ($179.17).

By the Court.

VI. *Defendant's application for appeal.*

(Filed Dec. 26, 1922.)

From the judgment rendered in the above-entitled cause on the 6th day of November, 1922, in favor of claimant, the defendants, by their Attorney General, on the 23rd day of December, 1922, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
*Assistant Attorney General.*

J. G. E.

VI. *Allowance of appeal.*

Order.

It is ordered by the Court that the defendant's application for appeal in this cause be and the same is allowed.
January 15, 1923.

9

Court of Claims.

[Title omitted.]

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law and memorandum entered by the court; of the judgment of the court; of the defendant's application for appeal; of the order of court allowing appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City, this sixth day of February, A. D. 1923.

[SEAL.]

F. C. KLEINSCHMIDT,
*Assistant Clerk, Court of Claims.*

(Indorsement on cover:) File No. 29,395, Court of Claims. Term No. 217. The United States, Appellant, vs. Charles J. Ferris. Filed February 12th, 1923. File No. 29,395.

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